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The Wilmot Proviso

History

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THE WILMOT PROVISO

BY

HADDON SPURGEON KIRK

THESIS

FOR THE

DEGREE OF BACHELOR OF ARTS

IN

HISTORY

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THIS IS TO CERTIFY THAT THE THESIS PREPARED UNDER MY SUPERVISION BY

Hoddon Spurgeon Kirk

ENTITLED The Wilmot Proviso

IS APPROVED BY ME AS FULFILLING THIS PART OF THE REQUIREMENTS FOR THE

DEGREE OF Bachelor of Arts in History

Instructor in Charge

APPROVED: Evarts B Greene

HEAD OF DEPARTMENT OF History.

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Part I.

The Inception and Historical Development of the Principle.

Slavery, introduced into the United States in the earliest colonial days from the West Indies, passed thru many and various degrees of development, not only from the viewpoint of an economic institution, but also from that of a political question of greatest importance and influence upon the development of the whole continent of North America. Taken as a whole there has been no other one such institution, economic or social, over which there has been such bitter political struggles; which has so greatly affected the territorial expansion of the United States; which has so completely stirred the country to its very depths; and which has so threatened the solidarity of our union as has this one, which with cumulative effect of bitter sectional agitation and sectional political divisions reached its final culmination in that bitter struggle of the union divided against itself- known thruout the annals of the world's history as the American Civil War.

If we might say that there was any one principle, the development and logical extension of which in relation to that of territorial expansion - both early founded in the very beginnings of our nation by Jefferson - was the underlying cause of the great struggle of brother against brother, that one principle would be that designated by the name of the Wilmot Proviso.

It was this Principle, which developing and being constantly applied in relation to slavery and increasing territory from the early days of the Confederation to the very eve of the Civil War, that was chiefly responsible for that darkest of periods in our Union's history. This principle which, tho it may be stated in a dozen words- the power of the Federal Government to prohibit slavery in the

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territories"--required years of political agitation, a disrupted union, and civil war before its final establishment beyond doubt was secured by an amendemnt to the national constitution which forever settled the question in the United States.

Hereafter this doctrine or principle that the National Government has the power under the Federal Constitution to prohibit the extension of slavery to, or the existence of slavery in the territories of the United States will, for the sake of convenience and brevity, be referred to by the name it received in Congressional legislation in 1846 - the Wilmot Proviso. In the early and troubled days of our first effort at unionized action under the Articles of Confederation, after their adoption had been finally secured by settling the momentous question of the western lands by their session to the Federal government by the states, the question of territorial government soon came up in order that there might be organized government under which the new territories might be settled.

In 1784 Jefferson, chairman of the committee on territories under the Confederate congress, in a report for the organization of a government for these newly ceded lands for the first time in our nations history[1] promulgated into congressional legislation that doctrine, which developing thru later years, became known, in that period of political agitation just preceding the civil war, as the Wilmot Proviso--so called from one of its ardent exponents at that time, one David Wilmot, democratic representative from the state of Pennsylvania.[2] The restriction on slavery in Jefferson's plan was to be applied forever to all western territory, ceded or to be ceded,

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1- Johnston, 30.
2- Cong. Globe, vol. 15, 1217.

both north and south of the Ohio river. Due largely to the fact that the Confederate congress had pledged itself not to restrict slavery south of the Ohio in order to induce their cession, the slavery proviso in the plan failed and did not receive the required vote of seven states to pass it.[1] The language of the proviso however became the classic upon which was modeled all the subsequent restrictions on slavery.

Tho on March 16, 1785 Rufus King[2] introduced a resolution in congress for immediate prohibition in all the territories, the next real step in the development of the proviso came shortly before the adoption of the Federal constitution, when the Confederate congress enacted the Ordinance of 1787 which was drafted by Nathan Hale of Massachusetts, and who used the report of Jefferson's of 1784 as the basis for the ordinance. The slavery proviso of the earlier plan was used verbatim with the exception that it applied only to the territory north of the Ohio river.[3]

When therefore the first congress of the United States under the new constitution adopted the ordinance of 1787 as enacted by the Confederate congress, it adopted along with it the restriction on slavery and for the first time definitely wrote into the records of the nation the power of congress to legislate on the extension of restriction of the institution of slavery.[4]

In the organization of the territories, tho allowing the people to elect their lower house, Congress retained to the national government the appointment of the governor who had the veto power on the territorial legislature. Congress also reserved as the last re-

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1- Johnston 1114.
2- Cong. Records for date.
3- McDonald, Source Book, See Index.
4- Johnston, 32.

sort the veto power on both the governor and the legislature, in all matters whatsoever.[1] This power of congress was never questioned, and it is likely that had it not been for the great influence of slavery caused by territorial expansion, that its power to restrict slavery, which rested upon the same basis exactly, would never have been questioned.

This doctrine first established in 1787 was still more firmly stated and fixed as a power of the national congress by the Missouri Compromise of 1820 by which many of the southern congressmen and almost all of the northern went of record as a body that congress did possess the power of slave restriction under the constitution. By this compromise slavery was definitely and absolutely prohibited in all territory of the Louisiana purchase north of the 36°30' line except in Missouri. This compromise remained in force until the definite nullification in the Kansas-Nebraska act of 1854.[2]

The great significance of the act of 1820 lies in the fact that it was the first time that the Federal congress had definitely gone on record asserting the fact that she possessed the power under the constitution to restrict slavery in the territories.

1- Ordinance 1787.
2- See Mo. Comp. & Johnston, 1114.

Part II.

The Bargain of 1844 and the Annexation of Texas.

The Immediate Cause of the Proviso.

Altho the slavery agitation continued during the years following the Compromise of 1820 with more or less vigor, and increased in volume and importance due to advocates of abolition like Seward and King, and to their opponents like Calhoun, yet at no time was it the great national issue it later became. Down to this time the principle had never been a political party issue in more than a local sense - among the local anti-slavery groups of the north - and had never effected the organization of the national political parties to any considerable extent.[1] Jefferson's effort in 1784 came within a hair's breadth of passing, and the more limited prohibition of 1787 had practically no opposition.[2] Even in the Compromise of 1820 the South did not deny the Congressional power to restrict slavery but only claimed it would be unjust for the national government to so suddenly and radically reverse its policy, since it had formerly had allowed slavery to grow and extend - at least by laches.[3] To this time slavery was not directly associated in the eyes of the general public with political parties as a party issue, even tho the National Republican - later Whig - Party had the preponderance of its support from the North, and the Democratic Party drew chiefly upon the South.[4] But with the revival of the question of annexation of Texas in 1844 by Tyler the slavery question was brought strongly before the people and became a party issue that henceforth was to be of supreme importance, for altho Mexico had long ago abolished slavery in all her

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1- Macy p. 93.
2- Johnston, p. 1114.
3- Ibid, 1113.
4- Macy, 93.

territory, yet Texas, having been settled chiefly by Southern slave holders and planters was now maintaining slavery as an independent state.

The Whig party in 1844 due to the treachery of Tyler to their principles were united in supporting Mr. Clay for the presidency. As the Majority of the Whigs were from the north they were opposed to the great slavery extension which the annexation of Texas would bring and hence were opposed to Annexation.[1] The southern Whigs kept place and union in the party by opposing the annexation of Texas and therefore the extension of slave territory. By this attitude the Southern Whigs cleverly side-stepped the issue of direct extension of slavery.[2]

In the spring of 1844 Clay wrote an open letter in which he strongly opposed annexation as being dishonorable to Mexico and meaning war with that country.[3] The Whig Convention met in Baltimore on May 1, enthusiastically endorsed Clay's views, and nominated him for president by acclamation.[4]

The situation in the Democratic Party presented a decided contrast to the comparatively unified state of their Whig rivals. To satisfy the Northern Wing of his party which was opposed to annexation, Van Buren, who had formerly been the favorite candidate for nomination, wrote a letter on April 20, 1844 similar to Clay's in which he vigorously opposed the policy of annexation.[5] Immediately the southern element of the party were ablaze with indignation. Some states which had already chosen and instructed delegates for Van

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1- Stanwood, 209.
2- Ibid
3- Clay, Correspondence, May 1, 1844.
4- See Greeley and Cleveland p. 13 for Whig Convention of 1844.
5- Stanwood, 211.

Buren, reheld conventions and instructed their delegates to vote against him; while in some cases delegates resigned rather than follow their instructions and give him their support. As a result, altho a majority of delegates had been instructed for him, when the Democratic National Convention met at Baltimore on May 27, it enforced the two thirds rule and thereby prevented his nomination. But 12 of the 105 southern delegates voted for him at any time, and on the ninth ballot, Polk of Tennessee, a "dark Horse", who was known to favor annexation, was nominated in a landslide.[1]

The writing of his letter on annexation cost Van Buren the Democratic Nomination in 1844, and as future events showed, in all probability the election as President of the United States. How far reaching an influence this letter has had upon the union is a question about which it is impossible to do more than merely speculate. But as Van Buren was opposed to annexation his election would have meant at all events the postponement of annexation; probably the avoidance of the War with Mexico; and would thereby have prevented at least for a considerable time, the Wilmot Proviso - with all that that meant to the struggle over the slavery question.

Prior to this time the Democratic Party had been but fairly united. The Northern element favored Van Buren and strongly opposed Slavery. The South supported Calhoun's views and favored Slavery. The Northwest leaned toward Cass and Douglas and was only moderately anti-slavery. When the question of annexation came up prior to the convention the leaders of the party in Congress from the South and the Northwest formed the "Bargain of 1844" by which the Northwest agreed to support the South in its efforts to secure annexation, and the

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1- Greeley and Cleveland, p. 13 for Democratic National Convention 1844.

South in return agreed to use their influence to secure the re-occupation of Oregon.[1] This "Bargain" was ratified by the National Convention at Baltimore and incorporated in the National Platform, which declared "that the reoccupation of Oregon and the reannexation of Texas at the earliest practicable period are great American measures, which the Convention recommends to the cordial support of all the Democrats of the Union."[2]

The only other political division which exerted any great influence in the election of 1844 was the Liberty Party which held a convention at Buffalo on August 30, 1843 and nominated James G. Birney of Michigan, on a detailed platform which demanded the unqualified and absolute divorce of the General Government from slavery, and which declared that government had no more power to establish or continue slavery in any part of the Union, than it had to make a king.[3]

The effect of this party, however, was far reaching. Had the Liberty Party leaders been content to have taken the more rational stand of the Whigs, and to have supported their nominee on the slavery and annexation question the whole course of our history world in all probability have been changed. The Liberty Party defeated Clay. The 15,000 odd votes they cast in the state of New York would have given Mr. Clay a popular majority of 24,119 votes in that state, and he would have received the 36 electoral votes of New York, which with the five he would have received from Michigan under the same conditions, would have given him a total of 146 electoral votes to 129 for Mr. Polk.[4]

1- Persinger, p. 191
2- See Greeley and Cleveland for Party platform, p. 13
3- Ibid, p. 13.
4- Greeley and Cleveland, p. 239 for Popular and Electoral votes by States.

Doubtless the Liberty Party leaders acted in good faith in refusing to support the Whig candidates but had they done so the annexation of Texas and thereby the War with Mexico would undoubtedly have been postponed, if not wholly prevented, since Clay was, and was known to be, strongly opposed to the Annexation Policy. With these conditions fulfilled there would have been no "2 Million Bill" and so no Wilmot Proviso as such;-[1] with a final result, the contemplation of which is now purely speculation.

Part III.

The Mexican War and the Resulting Attempt to Apply the Principle in Congressional Legislation.

Notwithstanding the fact that the popular majority of Polk in the election of 1844 was very slight,[2] the Democratic Party leaders took their success to mean a strong endorsement of their policy regarding annexation and the Southern element headed by Polk lost no time, with the aid of the Northwest Democrats, in carrying out that part of the Bargain of 1844.[3]

When on June 18, 1845, Texas was annexed by joint resolution of Congress, after three assurances by Mexico that such a step would be a declaration of war, we were theoretically tho not practically at war with that country. Texas without right claimed the boundary of the Rio Grande instead of the Nueces River and Polk at once sent General Taylor to hold Texas. In March 1846 he was ordered into the disputed territory; where on his refusing to leave, the Mexican leader

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1- See p.11 above.
2- Had 7918 votes been distributed carefully in N.Y., Penn., Ga., and Indiana - Clay would have received an Electoral majority of 103 votes. See Greeley and Cleveland, p. 239.
3- Persinger p. 195.

Arista attacked him and was defeated by Taylor at the battles of Palo Alto and Resaca de la Palma on May 8 and 9, 1846. Polk at once sent a message to congress declaring that "American blood had been spilt on American territory" by Mexico after we had done all we could to prevent war.[1] Congress at once made appropriations for carrying on the war and issued a call for volunteers.

The responsibility for this war lies largely with Polk and his party,[2] whose real incentive to the war and whose whole course of action during the war is explained by their policy towards Oregon in comparison to their Mexican policy. During Polk's presidential campaign of 1844 party pledges and campaign cries of "54°40' or fight" had been the keynote, yet Polk and his party tamely compromised with England on the line of 49° for Oregon and then turned to Mexico to regain an equivalent of the territory so lost. Polk was a man of southern inclination, elected largely by the vote of the southern democrats, who strongly favored slave territorial expansion, and the underlying cause of the above policy towards Oregon and Mexico lies in the fact that the Oregon climate would forever shut out slavery, while that institution would find genial soil and climate for its spread in New Mexico and California.[3]

The Mexican war, then, was a party measure of the Slave Democrats backed by Polk for the acquisition of more territory in which to spread slavery and promote all slave holding institutions, in order that the south might regain her lost power and prestige in the National Congress.[4]

Since the war was for territory Polk wished that object at-

1- Wilson, 9.
2- Jay, 180.
3- Jay, 181.
4- Wilson, 10.

tained as speedily as possible, and as it was evident during the summer of 1846 that Mexico could make no effective resistance to our arms,[1] he thought that money judicially distributed there would not only bring about peace but would also settle the boundary disputes in such a way that the United States could receive a large cession of the territory coveted by the slave-holding south.[2] Accordingly on August 8, 1846, after conferring with his cabinet, he sent a special message to congress, asking for an appropriation of two millions of dollars for the use of the executive "in securing peace with Mexico and settling the boundary disputes",[3] and at the same time citing the grants of money to Jefferson in 1803 and 1806 for the acquisition of Louisiana and Florida as precedents.

A bill for the appropriation of this amount was at once introduced into the House by Mr. McKay when to the irritation of the administration and of the whole southern element of the democratic party, David Wilmot of Pennsylvania, on August 8, 1846 moved his now famous proviso as an amendment to the appropriation bill. Tho presented by Wilmot the proviso was in reality drafted by Jacob Brinckerhoff of Ohio, who, because he was in the ill favor of his fellow democrats as a result of his opposition to the annexation of Texas, had gotten Wilmot to present the bill.[4] This proviso was modeled largely by Brinckerhoff on the draft made years before by Jefferson in his report on the territories in 1784, and read as follows:-[5]

"Provided:-that as an express and fundamental condition to the acquisition of any territory from Mexico by the United States by

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1- Greeley, 187.
2- Jay, 183. - Polk, II, 76.
3- Cong. Globe, vol. 15, 1213.
4- Cong. Globe, 1213.
5- Benton, Deb. 15/649.

virtue of any treaty negotiated by the executive by the use of any moneys herein appropriated; neither slavery nor involuntary servitude shall ever exist in any part of said territory except for the punishment of crime whereof the party shall be duly convicted."[1]

The introduction of this proviso was the result of the so called "Bargain of 1844"[2] between the Northwest democrats and the Southern branch of the Democratic Party. The Southern democrats had lost no time in annexing Texas in accordance with the agreement, but had only nursed along the Oregon question until after their purpose was accomplished and then dropped it.[3] Calhoun himself admitted he acted "boldly and promptly" on the Texas question and "deliberately" regarding Oregon, and attempted to justify it on the grounds of Political Expediency.[4] The Northwest was greatly incensed at this conduct which they denounced as a "betrayal" and a "singular course" and demanded reparation. This demand was met in the introduction of the Proviso.

Brinckenhoff who was the originator of the Proviso was a strong Northwest democrat from Ohio, and his action represented the feeling of the whole section on the treatment received by them in the outcome of the 1844 agreement.

The result was that the Northwestern democrats, who thru their desire to see extension of territory by reoccupation of Oregon, had been inveigled into voting for the annexation of Texas with her slaves, now determined to redeem themselves and pursue the extension of slavery to any newly acquired territory. They combined with the Northern Whigs and the proviso was passed in the House by a vote of

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1- Cong. Globe, vol. 15, 1217.
2- See page
3- Persinger p. 193.
4- Calhoun Works, vol. IV. Speech on 3 Millions Bill.

83 to 64, altho a vain effort was made by the South to restrict its action to any territory acquired north of the Missouri Compromise line. The original appropriation bill was then passed by a vote of 85 to 79.[1]

On August 10, this "two million bill" as it was called in the House was brought up in the Senate for consideration. A motion was made to strike out Wilmot's Amendment, and during the debate that followed, Davis of Massachusetts obtained the floor when there were only twenty minutes left before the adjournment of the Senate, and refusing to yield, he spoke for the proviso until the Senate was automatically adjourned by the coming of the end of the session. Davis thereby talked the bill out of existence and prevented any realization of the hopes of passing the bill at that session. He was severely criticized for his unseasonable loquacity as it was felt there was small doubt that the bill would have passed, altho some think he feared the passage of the original bill without the proviso as the sentiment of the Senate to him seemed to be against slavery restriction.[2]

This long-windedness of Davis has been held by many to have had momentous results on history, for at the time the general feeling appeared to be in the majority favorable to the proviso. Even the extreme pro slavery element of the South was caught half asleep and at the time hardly seemed to realize with Calhoun that the acquisition of free territory from Mexico was a mistake, which would defeat the whole aim of the war - a war which was the result of a purely pro slavery policy for the extension of slave territory.[3]

1- Congressional Globe, vol. 15, p. 1214.
2- Benton's Debates, vol. 15, 649.

At this time everything seemed to point to the passage of the bill at the next session but the immediate effect of the proviso was to bring about renewed agitation of that inflammable slavery expansion question. It served to make plain the irreconcilable differences between the interests and the ideals of the North and the South. It solidified the South in its own defense and almost solidified the Northern parties in opposition to the southern slave territorial expansion policy. The sectionalizing process thru slavery was brought to the beginning of its last stages by this proviso and forecasts of disunion became common,[1] while some of the southern counties even went so far as to propose a separate union of the southern states, and in their anger avowed their purpose in the Mexican war had been wholly a conquest for territory for the extension of slavery.[2] As an evidence of the unionizing tendency of the amendment in the north as soon as the issue became clearly defined all the northern legislatures with the single exception of Indiana and Maine adopted resolutions favoring the adoption of the Wilmot Proviso.

"It may be said that this proviso introduced by a democrat from Pennsylvania led to the first important discussion involving the question of slavery which had a marked effect upon the organization of Political Parties"[3] It was a signal for a debate over the question of slavery such as had never risen before, and that at a time when political parties were fully organized. During the years immediately following the introduction of this amendment the sectionalizing influence of slavery was felt by the two great national

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1- Garrison, 267.
2- McMaster, 493.
3- Macy, p. 95.

political parties as never before. The Wilmot Proviso had become a question of life or death to the slavocracy and the struggle now had to go on until the principle was decided definitely and once for all. Any suspension of hostilities by either side would only be a self deception by both the North and the South.

The extreme Pro-slavery party soon began to realize that the acquisitions of free territory from Mexico would not only defeat the purpose of the Slave Democrats in bringing about the war, but they also began to believe with Calhoun that it would be the laying of the foundation of the destruction of the Union.[1] Every Southern state legislature adopted vigorous resolutions against the proviso and the constituents of the Southern members of Congress literally bombarded them with letters against the measure. Calhoun, prodded on by his colleagues, launched a movement for a Southern Phalanx in Congress regardless of party affiliations. This movement was prevented only by the Southern Whigs of the more conservative type who were opposed to the acquisition of territory all together and who thought to kill the proviso by preventing the passage of the original Bill.[2]

The Northern Whigs had taken a definite stand against the extension of slavery in the territories and by 1847 the northern democrats became alarmed over their growing loss in power because of the stand of the southern democrats and so allied themselves largely with the northern Whigs in support of the so-called "Jefferson Proviso."[3] As a result tho the rejection of the proviso was a temporary triumph for the south it resulted in the growing union of the northern elements of the Whig and Democratic parties and by the fall

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1- Ibid, 99.
2- Deming, p. 36.
3- Smith, 109.

of 1847 the time seemed ripe for the establishment of the principle by the North.[1]

After Buena Vista and Fremont's campaign in New Mexico, Polk in December 1847 when congress was again in session, in his special message renewed his request for money to settle the dispute with Mexico, asking this time for three millions of dollars.[2] Sevier of Arkansas at once introduced the "three million" bill in the senate and a similiar one was reported at the same time in the House. Efforts to amend the bills by addition of slavery provisos were made in both Houses during the debates, and finally on Feb. 8 Wilmot was successful in having a bill introduced in the House incorporating the Wilmot proviso[3] in its form as developed by King, whereby slavery was prohibited in "any territory on the American continent which shall hereafter be acquired or be annexed by the United States".[4] On Feb. 15 the amendment was passed by the House by a vote of 110 to 89 and the original bill by 115-106.

In the Senate the House bill had the proviso stricken out, and after a hot debate by Webster, Calhoun, and others the original bill was passed and returned to the House where on March 3 the "Three million bill" was adopted by a vote of 115 to 81 without the proviso as an amendment.[5] As a result of this Congress decided to acquire territory by the peace, but the discussion of how this territory was to be disposed of was simply postponed.

In this vote on the proviso the Southern Democrats who favored expansion of territory voted solidly against the amendment, while

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1- Jay, 186.
2- Wilson, 23.
3- Cong. Globe, 352.
4- Ibid, 425.
5- Benton, Deb. vol. 16, 112.

the Southern Whigs who favored slavery but opposed territorial expansion also voted against the proviso in the effort to kill the original bill, and carried with them enough of the Northern Whigs on that ground to defeat the amendment when the bill was returned to the House by the Senate. In order to keep their party together the Northern Democrats were moved to extreme measures and Cass of Michigan created the new doctrine of "squatter sovereignty" by which the status of slavery in any territory was left to the people themselves, in the last effort to hold the Democratic Party as a unit. As a result Wilmot and his Democrats and his following of Northern Whigs were defeated by this combination of parties in their efforts to establish the proviso.[1]

Calhoun, besides taking a leading part in the senate debates over the proviso during that year, and declaring that if the north pushed the principle of the Wilmot Proviso it would disrupt the union, introduced into the senate on Feb. 19, 1847 a set of his justly famous resolutions.

(1) The territories of the United States are held by congress as agent of the states.

(2) Congress as joint agent has no power or right to discriminate against any section of the union in her laws for the territories.

(3) The enactment of any law which would prevent the emigration of any citizen into any territory with his property would be such a discrimination and, as such, unconstitutional.

(4) The fundamental principle of our government is that the people of a territory can make their own government with the single limitation that it shall be republican in form. Any other limitation

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1- Greeley, 190-193.

laid by congress would not only be unconstitutional but would be against the principle upon which the entire political system was founded.[1]

These principles, which were in direct opposition to that of the Wilmot Proviso, formed with the latter and Cass' "popular sovereignity" doctrine the three leading theories of the period regarding the power of congress over slavery. The rejection of the proviso as amended to the "threee million" bill was thot a great victory for the South and the feeling of Polk and his party[2] is well shown by the answer which the peace commissioner to Mexico - Trist - gave when that country tried to secure the limitation in the treaty that "the United States shall not permit slavery in any territory acquired by this treaty." In his answer Trist said, "If you could offer me the whole territory covered a foot thick all over it with pure gold upon the single condition that slavery should be excluded, I should have t to refuse to consider the offer."[3]

Part IV.

The Campaign of 1848. Effect of the Proviso on Political Parties

After the Peace of Guadelope Hildago on February 2, 1848 which acquired such a great amount of territory without any mention of slavery, party opposition to the proviso increased. The Southern Democrats still continued to oppose the principle, and the Southern Whigs who had voted against it all along thru opposition to expansion of territory joined their ranks. Even the Northern Democrats turned against it thru the new doctrine of "popular sovereignity" developed by Cass and Douglas. The proviso was left in 1848 with no friends in Congress except the Northern Whigs and the Wilmot Democrats who

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1- Benton, Deb. 16:86. 2- Polk, IV, 254. 3- Jay, 195.

combined largely with the new Free soil party.[1] Only the imminent presidential election of 1844 coupled with the doubtful possibility of a northern Free soil uprising prevented the organization of the territory without the proviso in the spring of 1848.

The disrupting and sectionalizing influence of the Wilmot proviso upon the existent political parties was very marked in the events leading up to the Presidential Campaign of 1848. By the time of the session of 1847 every southern member in Congress had been forced into an attitude of stronger opposition to the proviso. Every aspirant for office in the South had represented to the Southern constituents that any active or passive support given it by their Representatives was an act of treason to the South. The Southern Democrats were arrayed in a body against it.[2]

In the north the Democratic party was anything but unified. At the Democratic State Convention in New York an attempt made to secure an endorsement of the Proviso resulted in great confusion in which it was ruled out of order and practically voted down. This triumph of the "Hunkers" over the "Barnburners", who had been led by Van Buren in 1844, and which breach had never healed was loudly denounced by the latter faction who called a new State Convention to meet on February 22 to elect rival delegates to the Baltimore National Convention.[3] When this National Convention met on May 27, 1848 the Proviso was an equally dividing line. The "Barnburners" and "Hunkers" each sent rival sets of delegates, both of whom claimed to represent New York, and demanded the recognition of the Convention. The dicision of that body to admit both groups of delegates and let

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1- Johnston, 1115.
2- Van Holst, 303.
3- McMaster, vol. VII, p. 494.

them cast the vote of New York together satisfied neither and both withdrew from the Convention.[1]

The three most important candidates for nomination were all Northern men with more or less Southern principles. Cass of Michigan, Buchanan of Pennsylvania, and Woodbury of Maine. Cass was nominated on the 4th ballot on a platform incorporating that of 1844 and reasserting the statement that the Mexican war was a just one, provoked by years of insult and injury from Mexico. - All a platform formed to suit the South.[2]

The Whig Party, the more unified than the Democrats when they held their Convention in June 1848, were by no means solidified. There was a rapidly growing split in the party ranks. Clay, "the only man who could define Party orthodoxy" and who was above all a "National Whig"[3] was discarded with his principles, - some saying he should not be allowed to have a permanent mortgage on the Candidacy.[4]

On the question of the Wilmot Proviso the Northern Whigs had clearly shown their Anti-slavery character but the Southern Whigs with Clay as the Great Pacifier had held the party together by avoiding the issue, and they had by voting against annexation and acquisition of territory from Mexico - an thereby of course in effect voting against the Wilmot Proviso - cooperated with the Northern Whigs. They had denounced the Mexican war as infamous and had combined with the northern element in endeavoring to vote down acquisition of territory.[5] However, when by the treaty of Peace of 1848, the United States received a large territory without the status of

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1- Greeley and Cleveland, p. 14 for Convention Proceedings.
2- Smith, 124.
3- Cale, p. 127.
4- Stanwood, p. 230.
5- Cale, p. 121.

the Southern Whigs prepared to cooperate with slavery therein being determined, the Southern Democrats to force a satisfactory settlement of the question from the north. This growing split in the Party was the cause of the discarding of their old leader, Clay, and of the nomination by the Convention of June 7, 1848 of General Taylor - The popular Military Hero of the Hour -.[1] Taylor had never voted for a Presidential Candidate and his attitude was not definitely known, but he was a Southerner and a slave holder, and by his nomination the Southern Whigs sought to secure a check on the strongly anti-slavery character of the Northern Whigs.[2] As a result the struggle between Sectionalism and Nationalism in the Whig Party began in earnest. The nomination of Taylor by the Philadelphia Convention was a decided Southern Whig triumph, and was possible only after a somewhat stormy session of three days. The Convention formulated no platform and an effort to secure an endorsement of the Wilmot proviso was voted down.[3]

When the news of Taylor's nomination reached the Northwest and North there was great excitement and opposition to him. Meetings were held at which he was repudiated as a southern slave holder, and a Free Soil candidate was demanded. So strong was this movement in the Northwest against Taylor that a Peoples Convention met at Columbus, Ohio on June 20 following, and called for a National Free Soil Convention to meet at Buffalo the following August.[4]

June, 1848 was a month of Political Party Conventions. On the second the Liberty Party met at Rochester and nominated Smith of Michigan. On the thirteenth the Industrial Congress endorsed Smith

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1- Cale, p. 128.
2- Cale, p. 129.
3- Greeley and Cleveland, p. 15 for Convention Proceedings.
4- Smith, p. 129.

as their candidate. While on the 20th the People's Convention above mentioned met, demanded the nomination of candidates who were Wilmot Proviso men, and formulated a platform declaring for no more slavery, and no further extention of slave territory.[1]

The Barnburner faction of New York was vigorously dissatisfied with the nomination of Cass, as a man who opposed the Wilmot Proviso and accordingly held a State Convention at Utica on June 22 - where a letter from Van Buren was read in which he declared slavery was a moral curse, and that there should be no furthur extension of slave territory, and urged them to stand firm and nominate a candidate. This letter so pleased the Convention that they nominated Van Buren by acclamation.[2]

Dissatisfaction was great in the Northwest other than in Ohio. From all over that section cries of rage were heard. The Democratic party was split thruout on the ground that Cass did not represent the Northwest on the question of the Wilmot Proviso. Excited and enthusiastic meetings were held for Van Buren when the news of his nomination by the Barnburners was redeived. Many Democratic editors refused to head their papers with Cass's name despite the twits of their Whig rivals.[3]

The action of the Free Soil convention at Buffalo in August was awaited with considerable anxiety by all parties now that Van Buren was in the field as it was feared that the Northern anti-slavery parties might unite in a Free soil uprising if that convention approved his nomination. Future events proved such to be the case.

1- McMaster, vol. VII, 549.
2- Greeley and Cleveland, p. 14 and McMaster, vol. VII, 549.
3- Smith, 125ff.

The meeting opened with 300 delegates from 17 states present. Van Buren and C. F. Adams were nominated amidst great enthusiasm, and a long platform drawn up and adopted. The Baltimore Convention was denounced; Congress was declared to have no more power to make a slave than to make a king. It was demanded that the Federal Government relieve itself of all responsibility for slavery, and that a free territorial government be given Oregon, California, and New Mexico. The last resolution forced every slave issue. We demand "Free Soil, Free Speech, Free Labor, and Free Men."[1]

The Liberty party had secured its principles, and the Free Soil Democrats the nomination of their men.[2] As a result of this Convention the Liberty Party organization in almost all the states was broken up. Hale at once withdrew his name and came out strongly for Van Buren. The National Reform Party endorsed as a body the Free Soil candidate, and its example in this was followed by other small factional groups.[3]

At this Buffalo Convention the birth of a new Party was definitely recognized. From this time on the Free Soil Movement made up of the "Conscience Whigs", the Free Soil Democrats, the Liberty Men, and the Barnburner element of New York, was to be a movement to be reckoned with seriously. Free Soil electors were voted on in all the New England States, in all the Middle States save Deleware, and in Ohio, Illinois, Indiana, Michigan and Virginia.[4]

The election of 1848 was one long remembered. For the first time the Presidential electors were all chosen on the same day, and

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1- Greeley and Cleveland, p. 14 and Stanwood, p. 239.
2- Smith, p. 143.
3- McMaster, p. 549.
4- Ibid, 550.

that by Popular vote in all save one State.[1] Fifteen states were carried by the Whigs and fifteen by the Democrats but Taylor had a majority of the electoral votes both north and south of Mason's and Dixon's line and was elected by one hundred and sixty-three electoral votes to one hundred and twenty-seven for Mr. Cass.[2]

The possibilities of this election are interesting and far reaching. Had the Barnburners in New York supported the regular Democratic candidate Cass would have received the thirty-six electoral votes of that state and would have been elected President.[3] This factional split in the Party in New York caused the defeat of the Democratic party in 1848 as the Liberty party had caused the defeat of the Whig candidate in 1844. Not only that. This split divorced the Anti-slavery element of the party which combined with the dissatisfied Whigs and the small northern anti-slavery parties and thereby gave to the Free Soil movement its first great significance as a political party.

The Whig party had elected a Southern planter and slave holder, of whose fundamental political principles they knew relatively little, notwithstanding the fact that a majority of the voters lived in the North and wanted to see a policy pursued which would exclude slavery from the territory recently acquired from Mexico by the Treaty of Guadelope Hildago. The Democratic Party had supported a northern man and a one time supporter of the Wilmot Proviso. In both parties the vote had been rather for the principles of the party than for the persons of the candidates.

Had the Whigs in this campaign held strictly to their ground

1- South Carolina.
2- Greeley and Cleveland239 for returns by States.
3- Ibid, 239.
Taylor, 218,603.
Cass , 114, 318.
Van Buren, 120, 510.

on the question of the extension of slave territory, and nominated and supported a northern man with rational principles, there would, in all probability have been no political party of great importance formed on purely sectional lines at this time. But their avoidance of the great issues of the day and their nomination of a Southern candidate caused the inception of the Free Soil Party with its plain and firm statement of the slavery issues. Such a party was a logical outcome of such donduct. Had no such new political party been formed at this time, there is some reason to believe that there would have been no disruption of the Union at the time it came, such as followed the development of that party, And that slavery would gradually have ceased to be the great issue and sectionalizing influence it was, and would have declined in importance due to pressure of changing economic conditions.

Part V.

1848-1862. - The Final Establishment of the Proviso.

Oregon under her provisional territory government had aroused President Polk and his party by passing anti-slavery laws, and a bill for the organization of the territory was presented in Congress by Douglas in January 1848. Hale of Massachusetts endeavored to amend it by extending the slavery provision of the Ordinance of 1787 to it, but the bill was laid on the table and never revived. On August 2, another bill was introduced into the House containing the slavery clause of the Ordinance of 1787 and passed after much opposition. On August 10 the Senate passed it with an amendment limiting the slavery clause to the territory north of the Missouri Compromise line.[1] The House then refused to concurr and the Senate then passed

1- Johnston, 1116.

the original bill without its amendment and Oregon was admitted as a free state.[1] This action was due to the nomination in the Buffalo convention of a candidate for the presidency opposed to the extension of slavery.[2]

Some 20 years before the annexation of Texas by the United States, Mexico had forever abolished slavery from all of her territory. When New Mexico and California were ceded to the United States by the Treaty of Peace of 1848 they were therefore considered by the North as being free territory because of this Mexican law. However, during the debates on the organization of Oregon Calhoun invented a new dogma to fit the above case for the advantage of the South, which has been aptly characterized by Benton as the "transmigratory function of the constitution."[3] This new dogma was to the effect that "as soon as the treaty of peace with Mexico was ratified the sovereignity and authority of that country became extinct and that of the United States was substituted in its place, carrying with it the constitution and its overriding control over all institutions and laws of Mexico inconsistent with it. Since the constitution recognizes slavery as an established institution therefore New Mexico and California are open to citizens taking their property therein and the congress of the United States has no constitutional authority to prevent them from so doing."[4]

With this new principle as a basis the South fought all efforts to organize the newly gained territory with any application of the Wilmot Proviso and it was not until 1850 in the compromise of that year, which admitted California as a free state and provided for

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1- Johnston, 1116.
2- Smith, 141. (Van Buren)
3- Benton, 30 yrs, 713.
4- Ibid, 714.

the organization of the other territory without any mention of slavery, that any advance was made.[1]

It seemed that all desire for the proviso had fallen but the leaders of the Northern Democratic party headed by Douglas were not content to let well enough alone[2] and attempted in the Kansas-Nebraska act of 1854 to apply the "popular sovereignity" dogma of Cass and Douglas to the new territories of Kansas and Nebraska and so to break down the proviso after it had been established there by law (By the Missouri compromise of 1820).[3] At once the whole anti-slavery element of the north was aflame - agast at this new evidence of perfidy on the part of the slavery leaders. Douglas was denounced as a traitor and a Judas and his effigy was burned thruout the North. The angered North at once sprang to the rescue of the principle of the proviso and it was made the basis of the "Grand old Party"[4] in which were combined the majority of the northern Whigs who had been led by Clay and Adams; the northern Democrats who had rallied under Jackson; and the whole of the Free Soil party which had been founded about the time of the election of 1844, and which was led by Sumner, C. F. Adams and Giddings. With these also went the minor party commonly known as the Know Nothing Party which came into existence about 1852[5] in opposition to the foreign element in politics.

The new Republican party nominated Fremont in the campaign of 1856 in opposition to the southern candidate Buchanan. Threats of secession by the South were freely made in case Fremont should be elected, but Buchanan carried the solid South, which with Illinois, Indiana, and Pennsylvania gave the election to him - thereby postpon-

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1- See Comp. of 1850.
2- Johnston, 1117.
3- See Comp. 1820 and Johnston, 1117.
4- Ibid, 1117.
5- Elson, 579.

ing the great crisis for another four years.[1]

Douglas and his followers who had established the Kansas-Nebraska bill were upheld by the supreme court of the United States in its decision of the Dred Scott case. The decision held the Missouri Compromise unconstitutional and declared that congress had no power to restrict slavery in any territory.[2]

On May 24, 1860 the resolutions of Jefferson Davis presented an ultimatum to the northern branch of the democratic party. These resolutions, tho not adopted, were well understood by the northern parties and as a result when the program of the Republican party was endorsed in the Presidential election of 1860 and that party came into power under Lincoln the South seceded and war followed.[3]

When the withdrawal of the southern congressmen thru the secession of the southern states left a northern majority in congress, the Republicans passed a bill on June 19, 1862 after considerable debate which finally established the principle of Wilmot's proviso in almost the same words used by Jefferson in 1784. The bill ran thus:- "From and after the passage of this act there shall be neither slavery nor involuntary servitude in any of the territories of the United States now existing or which may at any time hereafter be formed or acquired by the United States, except for crime whereof the party shall first have been duly convicted."[4]

The results of the Wilmot Proviso principle were many and far reaching. Created with the very foundation of the nation it develop-

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1- Elson, 585.
2- See Dred Sctt case in McDon. Source Book or U.S. Sup. Ct. Rec.
3- Johnston, 1117.
4- Cong. Globe, for that date.

ed with the extension of slavery and territorial expansion until it was the chief issue in many of the greatest presidential campaigns. It was the one great question which caused the prolonged sectional political strife between the North and the South thruout the second quarter of the century for the political supremacy of the national congress. It was largely resonsible for the foundation of the Free soil party and that immensely greater party which later absorbed the Free soil party - and which still exists today. - The Republican Party.

It existed and persisted thruout the development of the nation for over three quarters of a century, having an immense influence on its development both in the line of territorial expansion and political progress.

From that long ago beginning of little importance it developed until during that period following its application by Wilmot it became a "gorgon's head", " a watchword of party and a synonyn for disunion and civil war". As Benton has[1] characterized it, "and this was the Wilmot Proviso, a thing of little importance in itself but magnified into hideous reality and seized upon to conflagrate the state and dismember the union - this which for years convulsed the union and prostrated men of firmness and patriotism".

Its chief importance lay with those two features which characterized the American politics during the second quarter of the 19th century, - slavery agitation and territorial expansion.

1- Benton, 30 yrs, p. 695.

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